IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4316 OF 2005

Sunil K. Khopkar ...Petitioner.

Versus

Sneha S. Khopkar ...Respondent.

Shri N.R.Bubna for the Petitioner.
None for the Respondent.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 30th JANUARY, 2006.

P.C. :

1. When this Petition was placed before this Court on 5th September, 2005 and even prior thereto notice was issued to the respondent, mainly with a view to explore the possibility putting an end to the dispute by mediation. It appears that mediation is not successful.

2. The challenge in this Petition is to an order, which was passed on 29th April, 2005 by the Joint Civil Judge, Senior Division, Kalyan below Exh.5 in Matrimonial Petition No.258 of 2003. The petitioner-husband filed this application under Section 26 of the Hindu Marriage Act. He sought interim custody of daughter Kadambari.

3. It is not necessary to scrutinise the order in great details because Shri Bubna submits that the

position continues inasmuch as the respondent-wife does not resides with her mother, but, is under the care of 'Nari Samata Manch'. The daughter Kadambari is also with her, but, she has not acquired any accommodation and the plight of the child is that when the respondent is away for work she is kept in an orphanage.

4. In my view, if this position continues then it would be open for the petitioner to file an application for the relief claimed earlier and needless to observe that rejection of the earlier application would not constitute a bar, for either the petitioner so applying or the Court below in considering the petitioner's request. Of course, the Court will keep in mind the settled principles pertaining to the welfare and wishes of the child.

5. This order is passed also because Shri Bubna submits that the access to the child is not being regularly provided. More particularly, because access is to be given to the petitioner at Ram Nagar Police Station. The petitioner also, alternatively, seeks the relief of regular access and at a place other than the Ram Nagar Police Station. Petition dismissed subject to above.

(S.C.DHARMADHIKARI,J.)